

SERIAL 01120 - RFP ELECTRONIC PRODUCTS AND SERVICES

APRIL 30, 2007
CONTRACT PERIOD THROUGH ~~APRIL 30 2005~~

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ELECTRONIC PRODUCTS AND SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **March 13, 2003**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

DL/mm
Attach

Copy to: Clerk of the Board
 Susan Varscsak, Library District
 Mirheta Muslic, Materials Management



CONTRACT FOR SERVICES PURSUANT TO RFP

SERIAL 01120-RFP

This Contract is entered into this 13th day of March 2003 by and between Maricopa County Library District ("County") and a political subdivision of the State of Arizona, and Facts on File, Inc., an New York corporation ("Contractor") for the purchase of Electronic Products and Services.

1.0 TERM

- 1.1 This Contract is for a term of twentyfive (_25_) months, beginning on the 13th day of March 2003 and ending the 30th day of April ~~2005~~ 2007.
- 1.2 The County may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional one (1) year terms up to a maximum of two (2) additional terms. The County shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, County shall pay Contractor the sum stated in Final Pricing, attached hereto and incorporated herein as Exhibit "A".
- 2.2 Payment under this Contract shall be made in the manner provided by law. Invoices shall be prepared and submitted in accordance with the instructions provided on the purchase order. Invoices shall contain the following information: contact number, purchase order number, description of services, unit prices, and extended totals and applicable sales/use tax.

3.0 DUTIES

- 3.1 The Contractor shall perform all duties stated in the Agreed Scope of Work, attached hereto and incorporated herein as Exhibit "B."

4.0 TERMS & CONDITIONS

4.1 INDEMNIFICATION AND INSURANCE:

4.1.1 Indemnification.

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney fees and costs, relating to this Contract.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the negligence of the County.

4.1.2 Insurance Requirements.

Contractor, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed companies in the State of Arizona with policies and forms satisfactory to the County.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of the County, constitute a material breach of this Contract.

The Contractor's insurance shall be primary insurance as respects the County, and any insurance or self-insurance maintained by the County shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the County.

The Contractor shall be solely responsible for the deductible and/or self-insured retention and the County, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

The County reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The County shall not be obligated, however, to review such policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of the County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, shall name the County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The insurance policies required hereunder, except Workers' Compensation, shall contain a waiver of transfer of rights of recovery (subrogation) against the County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

4.1.2.1 Commercial General Liability. Contractor shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00 01 10 93 or any replacements thereof.

The policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form CG 20 10 11 85, and shall include coverage for Contractor's operations and products and completed operations.

If the Contractor subcontracts any part of the work, services or operations awarded to the Contractor, Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner's and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the performance of the Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

4.1.2.2 Automobile Liability. Contractor shall maintain Automobile Liability insurance with an individual single limit for bodily injury and property damage of no less than \$1,000,000, each occurrence, with respect to Contractor's vehicles (whether owned, hired, non-owned), assigned to or used in the performance of this Contract.

4.1.2.3 Workers' Compensation. The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services, as well as Employer's Liability insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

If any work is subcontracted, the Contractor will require Subcontractor to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of the Contractor.

4.1.3 Certificates of Insurance.

4.1.3.1 Prior to commencing work or services under this Contract, Contractor shall have insurance in effect as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall be made available to the County upon 48 hours notice. **BY SIGNING THE AGREEMENT PAGE THE CONTRACTOR AGREES TO THIS REQUIREMENT AND FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF CONTRACT.**

If a policy does expire during the life of the Contract, a renewal certificate must be sent to the County fifteen (15) days prior to the expiration date.

4.1.4 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

4.2 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County
Department of Materials Management
Attn: Director of Purchasing
320 West Lincoln Street
Phoenix, Arizona

For Contractor:
Attn: Sara Anunciacao
Facts on File Inc.
132 West 31st Street, 17th Floor
New York, NY. 10001

4.3 REQUIREMENTS CONTRACT:

Contractor signifies its understanding and agreement by signing this document, that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made. Orders will only be placed when County identifies a need and issues a purchase order.

Contractor shall take no action under this Contract unless specifically requested by County, which shall submit a written purchase order to Contractor requesting that work be performed or product be delivered.

4.4 ESCALATION:

Any requests for reasonable price adjustments must be submitted thirty (30) days prior to the Contract expiration date. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If County agrees to the adjusted price terms, County shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the Producer Price Index or by performing a market survey.

4.5 TERMINATION:

County may unconditionally terminate this Contract for convenience by providing thirty (30) calendar days advance notice to the Contractor.

County may terminate this Contract if Contractor fails to pay any charge when due or fails to perform or observe any other material term or condition of the Contract, and such failure continues for more than ten (10) days after receipt of written notice of such failure from County, or if Contractor becomes insolvent or generally fails to pay its debts as they mature.

4.6 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. § 38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S § 38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

4.7 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

4.8 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the bid price. If additional services and/or

products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

4.9 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the County, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Bid Serial Number and identify the job project.

4.10 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.11 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse Maricopa County for the services not so adequately supported and documented.

4.12 AUDIT DISALLOWANCES:

If at any time County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

4.13 VALIDITY:

The invalidity, in whole or in part, of any provision of the Contract shall not void or affect the validity of any other provision of this Contract.

4.14 RIGHTS IN DATA:

The County shall have the use of data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.15 INTEGRATION

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, bids, communications, understandings, representations, or agreements, whether oral or written, express or implied.

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

AUTHORIZED SIGNATURE

PRINTED NAME AND TITLE

ADDRESS

DATE

MARICOPA COUNTY

BY: _____
DIRECTOR, MATERIALS MANAGEMENT

DATE

BY: _____
CHAIRMAN, BOARD OF SUPERVISORS

DATE

ATTESTED:

CLERK OF THE BOARD

DATE

APPROVED AS TO FORM:

MARICOPA COUNTY ATTORNEY

DATE

EXHIBIT A PRICING

Vendor Name: FACTS ON FILE, INC. Vendor Type (check one): Publisher X or Access Provider (VAR) _____

Product or Service: ONLINE REFERENCE DATABASES

Description Of Pricing Plan: (e.g.: Number of Sites, Budget, Population Served, Terminals, etc.) Prices are based on the number of cardholders in an institution. The following prices have been broken down to detail the cost per database PER individual library as well as a collection price PER library. Also included are prices for the consortium (arrangement) as a whole. Group purchases (other than the entire group) are eligible for a discount off of the individual library pricing. Please see below.

This pricing is guaranteed if 1 of the 8 Libraries purchase the product.

TABLE 1										
<i>Prices include unlimited/remote access</i>										
NUMBER OF REGISTERED CARDHOLDERS										
	<100,000		100-300,000		300-500,000		500-700,000		700-900,000	
American History *new	\$3,260.25		\$5,875		\$8,225		\$10,963		\$13,800	
African-American History & Culture	\$1,397.25	1,350	\$2,239	2,250	\$3,260	3,150	\$4,192	4,050	\$5,589	5,400
American Indian History & Culture	\$1,397.25	1,350	\$2,239	2,250	\$3,260	3,150	\$4,192	4,050	\$5,589	5,400
American Women's History	\$1,397.25	1,350	\$2,239	2,250	\$3,260	3,150	\$4,192	4,050	\$5,589	5,400
Ancient History	\$1,397.25	1,350	\$2,239	2,250	\$3,260	3,150	\$4,192	4,050	\$5,589	5,400
Career Guidance Center	\$1,397.25	1,350	\$2,239	2,250	\$3,260	3,150	\$4,192	4,050	\$5,589	5,400
Health Reference Center	\$1,397.25	1,350	\$2,239	2,250	\$3,260	3,150	\$4,192	4,050	\$5,589	5,400
Landmark Documents In American History			\$1,350	\$2,250	\$3,150		\$4,050		\$5,400	
Personal & Business Forms Online	\$1,397.25	1,350	\$2,239	2,250	\$3,260	3,150	\$4,192	4,050	\$5,589	5,400
The World Atlas	\$1,397.25	1,350	\$2,239	2,250	\$3,260	3,150	\$4,192	4,050	\$5,589	5,400
Science Online	\$1,397.25	1,350	\$5,434	5,250	\$7,607	7,350	\$9,781	9,450	\$13,008	12,568
Curriculum Resource Center K-5	\$3,260.25	2,250	\$3,881	3,750	\$5,434	5,250	\$6,986	6,750	\$9,292	8,978
Curriculum Resource Center 6-12	\$2,328.75	2,550	\$4,399	4,250	\$6,158	5,950	\$7,918	7,650	\$10,531	10,175
Curriculum Resource Center K-12 Package	\$2,639.25	3,600	\$6,210	6,000	\$8,694	8,400	\$11,178	10,800	\$14,867	14,364
Entire Facts On File Online Database Collection (reflects 30% discount)	\$13,693.05	13,230	\$22,822	22,050	\$31,950	30,870	\$41,079	39,690	\$51,688	49,940

	AMOUNT	or	PERCENT	NOTES
Additional Discount with 2 Libraries purchasing this product	\$	or	10%	Applied to Table 1
Additional Discount with 3 Libraries purchasing this product	\$	or	15%	Applied to Table 1
Additional Discount with 4 Libraries purchasing this product	\$	or	20%	Applied to Table 1
Additional Discount with 5 Libraries purchasing this product	\$	or	25%	Applied to Table 1
Additional Discount with 6 Libraries purchasing this product	\$	or	30%	Applied to Table 1
Additional Discount with 7 Libraries purchasing this product	\$	or	35%	Applied to Table 1
Additional Discount with 8 Libraries purchasing this product	\$	or	**%	**Please see consortium pricing
Additional Discount with Central Billing for all 8 libraries	\$	or	**%	**Please see consortium pricing

TABLE 2--CONSORTIUM PRICING

Prices include unlimited/remote access for 8 public libraries in Maricopa County

African-American History & Culture	\$9,595
American Indian History & Culture	\$9,595
American Women's History	\$9,595
Ancient History & Culture	\$9,595
Career Guidance Center	\$9,595
Health Reference Center	\$9,595
Landmark Documents In America History	\$9,595
Personal & Business Forms Online	\$9,595
The World Atlas	\$9,595
Science Online	\$22,384
Curriculum Resource Center K-5	\$15,988
Curriculum Resource Center 6-12	\$18,119
Curriculum Resource Center K-12 Package	\$25,580
Entire Facts On File Online Database Collection	\$87,307.30
(reflects 35% discount on Consortium Pricing)	

EXHIBIT B FACTS ON FILE LICENSE AGREEMENT

IT IS AGREED AS FOLLOWS:

1. KEY DEFINITIONS

1.1 In this License, the following terms shall have the following meanings:

Authorized Users	current members of the staff of the LICENSEE (whether on a permanent, temporary, contract or visiting basis) and individuals who are currently studying at the LICENSEE's institution or patrons, who are permitted to access the Secure Network from within the LICENSEE's Premises or from such other places where Authorized Users WORK or study (including but not limited to Authorized Users' offices and homes, halls of residence and student dormitories) and who have been issued by the LICENSEE with a password or other authentication.
Commercial Use	Use for the purposes of monetary reward (whether by or for the LICENSEE or an Authorized User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, neither recovery of direct costs by the LICENSEE from Authorized Users, nor use by the LICENSEE or by an Authorized User of the Licensed Materials in the course of research funded by a commercial organization, is deemed to be Commercial Use.
Course Packs	A collection or compilation of materials (e.g. book chapters, journal articles) assembled by members of staff of the LICENSEE for use by students in a class for the purposes of instruction.
Electronic Reserve	Electronic copies of materials (e.g. book chapters, journal articles) made and stored on the Secure Network by the LICENSEE for use by students in connection with specific courses of instruction offered by the LICENSEE to its students.
Fee	The Fee is set out in EXHIBIT A.
Institution Premises	The physical premises operated by the LICENSEE, as specified in Schedule 1.
Licensed Materials	The electronic material as set out in Schedule 1 or in new Schedules to this License that may be agreed by the parties from time to time.
Secure Network	A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorized Users approved by the LICENSEE whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the LICENSEE.
Server	The server, either the LICENSOR's server or a third party server designated by the LICENSOR, on which the Licensed Materials are mounted and may be accessed.
Subscription Period	That period nominally covered by the volumes and issues of the Licensed Material listed in Schedule 1, regardless of the actual date of publication.

2. AGREEMENT

- 2.1 The LICENSOR agrees to grant to the LICENSEE the non-exclusive and non-transferable right to give Authorized Users access to the Licensed Materials via the Server for the purposes of research, teaching and private study, subject to the terms and conditions of this License, and the LICENSEE agrees to pay the Fee. The Fee will be paid by the LICENSEE directly to the LICENSOR.
- 2.2 This License shall commence at the beginning of the Subscription Period, for each of the Licensed Materials as set out in Schedule 1 or in new Schedules to this License that may be added subsequently; and shall automatically terminate at the end of the Subscription Period, unless the parties have previously agreed to renew it.

3. USAGE RIGHTS

- 3.1 The LICENSEE, subject to Clause 5 below, may:
- 3.1.1 Make the Product available on a network or through remote access technology for Authorized Users only. Access to the Product will be secured by technology (such as IP range and/or address) or the use of an individual user password.
- 3.1.2 Allow Authorized Users to have access to the Licensed Materials from the Server via the Secure Network.
- 3.1.3 Display, download or print the Licensed Materials for the purpose of internal marketing or testing or for training Authorized Users or groups of Authorized Users.
- 3.2 Authorized Users may, subject to Clause 5 below:
- 3.2.1 Search, view, retrieve and display the Licensed Materials.
- 3.2.2 Electronically save parts of the Licensed Materials for personal use.
- 3.2.3 Print copies of parts of the Licensed Materials.
- 3.2.4 Distribute copies of parts of the Licensed Materials in print or electronic form to other Authorized Users.

4. COURSE PACKS AND ELECTRONIC RESERVE

- 4.1 The LICENSEE may, subject to Clause 5 below, incorporate parts of the Licensed Materials in printed Course Packs and Electronic Reserve collections for the use of Authorized Users in the course of instruction at the LICENSEE's institution, but not for Commercial Use. Each such item shall carry appropriate acknowledgement of the source, listing title and author of the extract, title and author of the WORK, and the LICENSOR. Copies of such items shall be deleted by the LICENSEE when they are no longer used for such purpose. Course packs in non-electronic non-print perceptible form, such as audio or Braille, may also be offered to Authorized Users who, in the reasonable opinion of the LICENSEE, are visually impaired.

5. PROHIBITED USES

- 5.1 Neither the LICENSEE nor authorized Users may:
- 5.1.1 remove or alter the name(s) of the author(s) of the Licensed Materials or the LICENSOR's copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;
- 5.1.2 mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network

5.2 The LICENSOR's explicit written permission must be obtained in order to:

- 5.2.1 use all or any part of the Licensed Materials for any Commercial Use;
- 5.2.2 systematically distribute the whole or any part of the Licensed Materials to anyone other than Authorized Users;
- 5.2.3 publish, distribute or make available the Licensed Materials, WORKs based on the Licensed Materials or WORKs which combine them with any other material, other than as permitted in this License;
- 5.2.4 alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen or as otherwise permitted in this License, to Authorized Users. For the avoidance of doubt, no alteration of the words or their order is permitted.

6. LICENSOR'S UNDERTAKINGS

6.1 The LICENSOR warrants to the LICENSEE that the Licensed Materials used as contemplated by this License do not infringe the copyright or any other proprietary or intellectual property rights of any person. The LICENSOR shall indemnify and hold the LICENSEE harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any legal action taken against the LICENSEE claiming actual or alleged infringement of such rights. This indemnity shall survive the termination of this License for any reason. This indemnity shall not apply if the LICENSEE has amended the Licensed Materials in any way not permitted by this License.

6.2 Institutions covered under the auspices of the LICENSEE are:

PARTICIPATING LIBRARY DISTRICTS

- 1. Chandler Public Library
- 2. Glendale Public Library
- 3. Maricopa County Library District
- 4. Mesa Public Library
- 5. Peoria Public Library
- 6. Phoenix Public Library
- 7. Scottsdale Public Library
- 8. Tempe Public Library
- 9. Other (Participant with an Intergovernmental Agreement with Maricopa County pending approval from the LICENSOR)

- 6.2.1 make the Licensed Materials available to the LICENSEE from the Server in the media, format and time schedule specified in Schedule 1.
- 6.2.2 Use all reasonable endeavors to ensure that the Server has adequate capacity and bandwidth to support the usage of the LICENSEE at a level commensurate with the standards of availability for information services of similar scope operating via the World Wide Web, as such standards evolve from time to time over the term of this License.
- 6.2.3 Use all reasonable endeavors to make the Licensed Materials available to the LICENSEE and to Authorized Users at all times and on a twenty-four hour basis, save for routine maintenance (which shall be notified to the LICENSEE in advance wherever possible), and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the service.
- 6.2.4 If the aforementioned database shall lose more than 10% of its full-text content, the LICENSOR shall make its best efforts to replace lost content with similar text. If the LICENSOR is unable to accomplish this, the LICENSOR will refund the prorated portion of the subscription.

- 6.2.5 The Definition of the authorized user will be “Authorized users are the registered users of the participants as defined by the participants.” This does not include institutions outside the State of Arizona, however it does include users affiliated with the associated subscribing libraries.
- 6.2.6 New content features and upgrades made to the WORK under license and sold to new customers as part of the basic WORK will be made available to the LICENSEE at no additional charge.
- 6.3 The LICENSOR may collect and analyze data on the usage of the Licensed Materials, which will assist both the LICENSOR and the LICENSEE to understand the impact of this License. The LICENSOR shall provide (upon written request) usage data on the number of titles of abstracts and of articles downloaded, by title, on a monthly basis for the LICENSOR’s and the LICENSEE’s private internal use only. Such usage data shall be compiled in a manner consistent with applicable privacy and data protection laws and as may be agreed between the parties from time to time, and the anonymity of individual users and the confidentiality of their searches shall be fully protected.
- 6.4 Except as expressly provided in this License in Clause 6.1, the LICENSOR makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Licensed Materials, merchantability or fitness of use for a particular purpose. The Licensed Materials are supplied ‘as is’.
- 6.5 Under no circumstances shall the LICENSOR be liable to the LICENSEE or any other person, including but not limited to Authorized Users, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Licensed Materials. Irrespective of the cause or form of action, the LICENSOR’s aggregate liability for any claims, losses, or damages arising out of any breach of this License shall in no circumstances exceed the Fee paid by LICENSEE to the LICENSOR under this License in respect of the Subscription Period during which such claim, loss or damage occurred. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies.
- 6.6 The LICENSOR will ensure that, if during the term of this license, advertising is added to the interface used for searching and retrieving of data from the WORK, that the LICENSEE will be given an option to restrict such advertising.
- 6.7 The LICENSOR will undertake to give reasonable notice of scheduled upgrades or maintenance that will limit the LICENSEE’s usage of the WORK.
- 6.8 The LICENSOR will WORK with individual institutions covered under this agreement to ensure access to the WORK in locations where Internet filtering software is installed.

7. LICENSEE’S UNDERTAKINGS

- 7.1 The LICENSEE shall:
- 7.1.1 use all reasonable endeavors to ensure that all Authorized Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials;
- 7.1.2 use all reasonable endeavors to ensure that the Authorized Users are made aware of and undertake to abide by the terms and conditions of this License;
- 7.1.3 use all reasonable endeavors to monitor compliance and immediately upon becoming aware of any unauthorized use or other breach, inform the LICENSOR and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
- 7.1.4 issue passwords (if applicable) or other access information only to Authorized Users and use all reasonable endeavors to ensure that Authorized Users do not divulge their passwords or other access information to any third party;

- 7.1.5 keep full and up-to-date records of all Authorized Users and their access details, IP addresses and, if appropriate, provide the LICENSOR with periodic lists of additions, deletions or other alterations to such records as agreed between the parties from time to time;
- 7.1.6 use all reasonable endeavors to ensure that only Authorized Users are permitted access to the Licensed Materials.
- 7.2 The LICENSEE agrees to indemnify, defend and hold the LICENSOR harmless from and against any loss, damage, costs, liability and expenses (including reasonable legal and professional fees) arising out of any claim or legal action taken against the LICENSOR related to or in any way connected with any use of the Licensed Materials by the LICENSEE or Authorized Users or any failure by the LICENSEE to perform its obligations in relation to this License, provided that nothing in this License shall make the LICENSEE liable for breach of the terms of the License by any Authorized User provided that the LICENSEE did not cause, knowingly assist or condone the continuation of such breach to continue after becoming aware of an actual breach having occurred.
- 7.3 The LICENSEE shall, in consideration for the rights granted under this License, pay the Fee within thirty (30) days of receipt of invoice and, if applicable, within thirty (30) days of receipt of invoice relating to each subsequent Subscription Period. For the avoidance of doubt, the Fee shall be exclusive of any sales, use, value added or similar taxes and the LICENSEE shall be liable for any such taxes in addition to the Fee.

8. UNDERTAKINGS BY BOTH PARTIES

- 8.1 Each party shall use its best endeavors to safeguard the intellectual property, confidential information and proprietary rights of the other party.

9. GENERAL

- 9.1 Alterations to this License and to the Schedules to this License are only valid if they are recorded in writing and signed by both parties.
- 9.2 Neither party's delay or failure to perform any provision of this Licence, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) shall be deemed to be, or to give rise to, a breach of this Licence.
- 9.3 The invalidity or un-enforceability of any provision of this Licence shall not affect the continuation or enforceability of the remainder of this Licence.
- 9.4 This Licence shall be governed by and construed in accordance with Arizona State law.

SCHEDULE 1

LICENSED MATERIALS SUBSCRIPTION PERIOD AND ACCESS METHOD

Name of Subscriber: _____

Street Address: _____

CITY, STATE AND ZIP CODE: _____

Select products being received or ordered:

- ☐ American History Online *new
- ☐ African-American History & Culture
- ☐ American Indian History & Culture
- ☐ American Women's History
- ☐ Ancient History
- ☐ ~~Career Guidance Center~~
- ☐ World History Online *new
- ☐ Health Reference Center
- ☐ ~~Landmark Documents In American History~~
- ☐ Personal & Business Forms Online
- ☐ The World Atlas
- ☐ Science Online
- ☐ Curriculum Resource Center K-5
- ☐ Curriculum Resource Center 6-12
- ☐ Curriculum Resource Center K-12 Package
- ☐ Entire Facts On File Online Database Collection

****Landmark Documents is no longer available; it has been added to American History Online, in it's entirety**

List of addresses of the LICENSEE's Library Premises, Domain Name(s) and IP addresses and/or ranges:

ACCESS METHOD:

- ☐ Authentication via User ID/password and IP Address
- ☐ Authentication via IP address
- ☐ Authentication via Library Barcode

Effective Date: _____

NETWORK CONTACT:

Name: _____

Telephone: _____

Fax: _____

Email: _____

Signature of Authorized Subscriber Representative: _____

Name of Authorized Subscriber Representative (**please print**): _____

Title of Authorized Subscriber Representative: _____

Date: _____

Sales Person Contact: _____

FACTS ON FILE, 132 W 31ST STREET 17TH FLOOR, NEW YORK, NY 10001

PRICING SHEET S0274 02 / B0604225

Terms:	NET 30
Vendor Number:	133720604 W000001766 X
Telephone Number:	800/322-8755
Fax Number:	212/967-9196 917/339-0326
E-Mail Address (REP)	Sara Anunciacao
Contact Person	sanunciacao@factsonfile.com
Insurance Certificate	Required
Contract Period:	To cover the period ending April 30, 2005 2007.